## BEFORE THE APPEALS BOARD FOR THE KANSAS DIVISION OF WORKERS COMPENSATION

FRANK SIMON Claimant	}
VS.	) ) ) Docket No. 201,832
STATE OF KANSAS Respondent	) )
AND	
STATE SELF-INSURANCE FUND Insurance Carrier	<b>\}</b>

## ORDER

Respondent appeals from a Preliminary Hearing Order of July 6, 1995, wherein Administrative Law Judge John D. Clark granted claimant benefits finding claimant had carried his burden of showing accidental injury arising out of and in the course of his employment.

## ISSUES

Whether claimant suffered accidental injury arising out of and in the course of his employment on the dates alleged.

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based upon the evidence presented and for the purpose of preliminary hearing, the Appeals Board finds as follows:

The Appeals Board finds the above enumerated issue is one appealable to the Appeals Board pursuant to K.S.A. 44-534a.

Respondent alleges claimant has not shown by a preponderance of the credible evidence that the injury suffered to his right upper extremity, specifically his right elbow, arose out of and in the course of his employment. Claimant testified to specific activities involving the use of a shovel on a regular basis. Claimant's superintendent, Terry Oneslager, testified that the claimant had advised him that digging with the shovel bothered him and the jabbing with the shovel irritated his elbow.

Recognizing that it is claimant's burden pursuant to K.S.A. 44-501 and K.S.A. 44-508(g) to prove by a preponderance of the evidence the various elements upon which claimant's right depends, the Appeals Board finds claimant has satisfied this burden. As such, the Appeals Board finds the Order of Administrative Law Judge John D. Clark should be, and is hereby, affirmed.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge John D. Clark dated July 6, 1995, shall be and is affirmed.

IS SO ORDERED.	
ated this day of September, 1995.	
BOARD MEMBER	
BOTALD INCINEER	
BOARD MEMBER	
BOARD MEMBER	
ion D. Diototnik Wighita, Kanaga	

c: Brian D. Pistotnik, Wichita, Kansas Kendall R. Cunningham, Wichita, Kansas John D. Clark, Administrative Law Judge Philip S. Harness, Director